

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRANK MOSS,

Movant,

-against-

UNITED STATES OF AMERICA,

Respondent.

21-CV-643 (KMK)

19-CR-583-1 (KMK)

ORDER TO ANSWER

KENNETH M. KARAS, United States District Judge:

The Court, having concluded that the motion brought under 28 U.S.C. § 2255 should not be summarily dismissed as being without merit, hereby ORDERS that:

Within sixty days of the date of this order, the U.S. Attorney's Office shall file an answer or other pleading in response to the § 2255 motion. Movant shall have thirty days from the date on which Movant is served with Respondent's answer or other pleading to file a response. Absent further order, the § 2255 motion will be considered fully submitted as of that date.

Movant requests the appointment of counsel. (Pet. 13 (Dkt. No. 1).) There is no constitutional right to counsel in a proceeding brought under § 2255. The Criminal Justice Act (CJA) provides that a court may appoint counsel to an indigent person in a § 2255 proceeding when "the interests of justice so requires." 18 U.S.C. § 3006A(a)(2)(B). In deciding whether to exercise its discretion to appoint counsel under the CJA, courts in this circuit consider the same factors as those applicable to requests for pro bono counsel made by civil litigants. *See e.g., Zimmerman v. Burge*, 492 F. Supp. 2d 170, 176 n.1 (E.D.N.Y. 2007) (citing *Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989)). Those factors include the likelihood of success on the merits, the complexity of the legal issues, and the movant's ability to investigate and

present the case. *See Cooper*, 877 F.2d at 172; *Hodge v. Police Officers*, 802 F.2d 58, 61–62 (2d Cir. 1986).

The Court has considered those factors and finds that the appointment of counsel is not warranted at this time. Accordingly, the motion for the appointment of counsel is denied without prejudice. Movant may file another such motion at a later date.

The Clerk of Court shall electronically notify the Criminal Division of the U.S. Attorney's Office for the Southern District of New York that this order has been issued. The Clerk of Court is further directed to mail a copy of this order to Movant and note service on the docket.

All further papers filed or submitted for filing must include the criminal docket number and will be docketed in the criminal case.

SO ORDERED.

Dated: February 2, 2021
White Plains, New York

A handwritten signature in black ink, appearing to read 'K. Karas', is written over a horizontal line.

KENNETH M. KARAS
United States District Judge